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No. 90-536

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JOHN GARD, *et al.*,
Petitioners,

v.

WISCONSIN STATE ELECTIONS BOARD, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Wisconsin

BRIEF IN OPPOSITION OF RESPONDENTS COMMON CAUSE IN WISCONSIN, INC., WISCONSIN LEAGUE OF WOMEN VOTERS, INC., DAVID TRAVIS, FRIENDS OF DAVE TRAVIS, THOMAS LOFTUS, THE DEMOCRATIC PARTY OF DANE COUNTY, and THE ASSEMBLY DEMOCRATIC CAMPAIGN COMMITTEE

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QUESTION PRESENTED

In the particular context of the Wisconsin electoral system, in light of the findings of the state legislature and on the record below, did the Wisconsin Supreme Court properly hold—applying strict scrutiny—that the compelling interest in preventing political corruption justifies the state's unique aggregate limit on the amount of contributions by PACs and political party committees to state candidates?

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STATEMENT OF THE CASE

The petitioners ask this Court to review the unanimous decision of the Wisconsin Supreme Court upholding a provision of the state's campaign finance law. That statute, Wis. Stat. § 11.26(9)(a), limits the total amount of campaign contributions a state candidate may accept from all PACs and political party committees combined to 65 percent of the candidate's statutory spending level.

The petitioners brought this case as an original action in the state supreme court after the State Elections Board

filed a civil action alleging that one of them, State Representative John Gard, had violated the statute in 1987. They argued that the aggregate contribution limit violates the First Amendment rights of individuals, committees and candidates. Petitioners' Appendix ("Pet. App."), p. A-42. The entire record consists solely of a cursory stipulation of facts about the parties and Rep. Gard's violation of the statute. *Id.* at A-39 to 41, A-51.[1]

In a decision issued on June 27, 1990, without dissent, the Wisconsin Supreme Court rejected each of the arguments the petitioners now have raised here. Applying strict scrutiny to the challenged statute, the court concluded that the law was narrowly tailored to serve the state's compelling interest in protecting the political process from the corruption, real or apparent, that results from the dominance of special interest contributions in political campaigns. *Id.* at A-1 to 37.

A. Contribution Limits In The Wisconsin Campaign Finance Law.

Wisconsin regulates the financing of its political campaigns in Chapter 11, Wis. Stats. Enacted more than 15 years ago, the law establishes a comprehensive system of contribution limits, partial public financing coupled with spending limits, and public disclosure requirements—all enforced by an appointed, bipartisan Elections Board. The campaign finance statute rests on a series of explicit legislative findings of fact:

> [W]hen a candidate becomes overly dependent upon large private contributors, the democratic process is subjected to a potential corrupting influence. The legislature therefore finds that the state has a compel-

[1] The Elections Board alleged that Rep. Gard violated § 11.26 (9) (a) by accepting a total of $18,820 in contributions from PACs and party committees when the aggregate limit under the statute was $11,213. Pet. App., p. A-40. The Board has stayed its enforcement action pending the resolution of this case.

> ling interest in designing a system for fully disclosing contributions and disbursements . . ., and in placing reasonable limitations on such activities.

Wis. Stat. § 11.001.

To deter the "potential corrupting influence" of "large private contributors," the legislature adopted limits on the amount of money any individual or committee could give any state candidate in any single campaign. *See* Wis. Stat. §§ 11.26(1), and (2). It also enacted several aggregate contribution limits.

No individual, for example, may make more than $10,000 in political contributions in a calendar year to all state candidates and committees combined. Wis. Stat. § 11.26(4). Political party committees may not receive, biennially, more than $6,000 from any single PAC or more than $150,000 in the aggregate from all non-party committees combined. Wis. Stat. § 11.26(8). And there are the aggregate limits on committee contributions to state candidates placed in issue by the petitioners:

> (9) (a) No individual who is a candidate for state or local office may receive and accept more than 65% of the value of the total disbursement level determined under s. 11.31 for the office for which he or she is a candidate during any primary and election campaign combined from all committees subject to a filing requirement, including political party and legislative campaign committees.
>
> (b) No individual who is a candidate for state or local office may receive and accept more than 45% of the value of the total disbursement level determined under s. 11.31 for the office for which he or she is a candidate during any primary and election campaign combined from all committees other than political party and legislative campaign committees subject to a filing requirement.

Wis. Stat. § 11.26(9).[2]

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[2] The petitioners ostensibly challenge only the aggregate limit on all committee contributions in § 11.26(9)(a), not the additional

The law establishes the aggregate committee contribution limits as a percentage of the expenditure levels, defined in Wis. Stat. § 11.31, for candidates accepting public financing. The statute's contribution limits apply to all state candidates, whether or not they accept public financing. *See* Wis. Stat. §§ 11.26(1), (2). Because § 11.26(9)(b) limits aggregate PAC contributions to 45 percent of the candidate's expenditure level, the higher 65 percent limit on combined PAC and political party committee contributions guarantees that party committees always may contribute, at the very least, 20 percent of every candidate's expenditure level. Pet. App., p. A-28.

The aggregate contribution limit in § 11.26(9)(a) is the *only* limit on contributions to candidates by political party committees, which include the parties themselves and their legislative campaign committees. Pet. App., p. A-23. Unlike PACs, whose individual contributions to candidates are limited by statute, party committees may contribute any amount up to the aggregate limit to every candidate for any state office. *See* Wis. Stat. § 11.26(2).

State assembly candidates like John Gard, for example, may accept only $500 from any single PAC or any one individual. Wis. Stat. § 11.26(2)(c). They may take up to $3,450 (20 percent of the expenditure level) from their party committees under § 11.26(9)(a), however, even if they accept the full amount of PAC contributions allowed under § 11.26(9)(b). Moreover, a state assembly candidate may take up to $11,213 (65 percent of the expenditure level) from political party committees if the candidate takes no PAC money. *See* Pet. App., pp. A-9 to 10, A-40.

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limit on PAC contributions in § 11.26(9)(b). Petition, p. 5. The Wisconsin Supreme Court, however, explicitly rejected the petitioners' attempt to understate the impact of their constitutional attack on the state's limit on special interest money. It is not possible to invalidate the limits on total committee contributions, the state supreme court held, without simultaneously invalidating the limit on PAC contributions. Pet. App., p. A-14, n.11.

B. Legislative History Of The Wisconsin Campaign Finance Law.

The Wisconsin Supreme Court based its unanimous decision upholding the constitutionality of § 11.26(9)(a) on the statute's unique and extensive legislative history. Wisconsin has long had a tradition of open and honest government. Pet. App., p. A-5. It is a nationally-recognized tradition that rests, at least in part, on the state's relatively strict regulation of campaign financing for the last 80 years.

The state enacted its first campaign finance law, the Corrupt Practices Act, in 1911 with provisions derived from the election laws passed soon after Wisconsin became a state more than 140 years ago. The 1911 law imposed reporting requirements and set spending limits, but it did not limit individual contributions. *See generally*, Comment, *Campaign Finance in Wisconsin after Buckley*, 1976 Wis. L. Rev. 816, 821-24.

In 1973, in the wake of the Watergate scandals, Governor Patrick J. Lucey established a committee, chaired by University of Wisconsin professor of political science David Adamany, to study campaign financing in Wisconsin and to recommend improvements in the state's campaign finance law. Pet. App., p. A-5. The Adamany Committee found, after a wide-ranging historical and statistical analysis, that "special interest money looms large in Wisconsin politics." To address that problem, the Committee recommended limits not only on the amount individual committees could contribute to state candidates but aggregate limits on contributions "from all associations and political committees." *Id.* at A-18 to 19.

The aggregate limits were necessary, the Committee found, to prevent special interests "from circumventing contribution limits through multiple committee giving and laundering." *Id.* at A-19. Single candidate contribution limits are not enough, the Committee said, be-

cause a contributor also "can give the legal maximum to each of several state and party committees, which in turn pass them through to the candidate." Intervening Respondents' Appendix, p. 282, *Gard v. Wisconsin State Elections Board*, 156 Wis. 2d 28, 456 N.W.2d 809 (1990).

The legislature soon passed a comprehensive campaign finance reform bill, based on the Adamany Committee's findings, that adopted the concept of aggregate committee contribution limits. The statute's legislative history leaves no doubt that the legislature enacted § 11.26(9) for the very reason the Adamany Committee had recommended it: to prevent individual PACs from evading contribution limits and exerting influence over candidates, through the political parties and their related committees.

During the legislature's 1974 deliberations on the campaign finance bill, Senate Majority Leader William Bablitch emphasized that limiting the amount of contributions by individual PACs did not fully address the problem of special interest influence. Pet. App., pp. A-19 to 20. PACs could evade the single-PAC contribution limit simply by creating new PACs, with different names but the same interests, to fund the same candidates. They also could evade the contribution limits by contributing to the major political parties "with a tacit understanding of which candidate is going to receive" the contribution, in turn, from the party committees. To prevent that, he recommended that an aggregate limit be placed on all committee contributions, including political party committees. *Id.*

Relying on the Adamany Committee's comprehensive analysis, the legislature agreed with Senator Bablitch that an aggregate limit on all committee contributions was essential to avoid the "potential corrupting influence," Wis. Stat. § 11.001, of special interest money. The legislature adopted the campaign finance law in nearly unanimous votes by legislators of both parties, setting the limit

on total PAC and political party committee contributions at 65 percent of a candidate's spending level under the public financing provision of the law. 1973 Wis. Laws ch. 334.

The legislature amended § 11.26(9) several years later, adding § 11.26(9)(b) to hold aggregate contributions from PACs to a maximum of 45 percent of a candidate's spending level. 1977 Wis. Laws ch. 107, § 31. In 1986, the legislature added its own legislative campaign committees—one for each party in each legislative chamber—to the party committees and PACs already subject to the 65 percent limit. 1985 Wis. Act 303, § 51.[3]

REASONS FOR DENYING THE WRIT

I. THIS CASE DOES NOT MERIT REVIEW: THE CHALLENGED STATUTE IS UNIQUE AND THE RECORD INADEQUATE.

The petitioners devote most of their petition to the merits of the case with almost no discussion of why it merits this Court's attention. Nowhere do they explain how the petition might satisfy any of the criteria in Sup. Ct. R. 10. Nowhere do they assert that the Wisconsin Supreme Court's decision conflicts with any other federal or state appellate decision.

Even if the petitioners were correct on the merits of the case—and they certainly are not—the Court still should not grant the petition. The Court's decision in this case would have little precedential effect because the challenged statute represents one state's response to its particular experience and history. Of equal importance, there is virtually no factual record on which to review the Wisconsin Supreme Court's decision or even to evaluate fairly the petition for a writ of certiorari.

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[3] That addition was "not intended to change the law . . .; it [was] rather, intended to confirm the existing law," which already had included the legislative campaign committees in the party committee-PAC limit. 1985 Wis. Act 303, § 1.

A. The Wisconsin Statute Is Unique In Text And Context.

Wisconsin's aggregate committee contribution statute, with its 45 percent limit on PAC contributions and 65 percent limit on PAC and party committee contributions combined, is unique. Four other states—Arizona, California, Louisiana and Montana—limit the aggregate amount of committee contributions their candidates may accept.[4] Of those states, however, only Arizona includes contributions from political party committees in those aggregate limits. *See* Ariz. Rev. Stat. Ann. § 16-901.1; 1984 Op. Att'y Gen. Ariz. 131.

Unlike Wisconsin, however, Arizona does not preserve a portion of that aggregate amount for contributions by political party committees. Ariz. Rev. Stat. Ann. § 16-905.C. Wisconsin is the *only* state, therefore, that includes party committee contributions in an aggregate limit while simultaneously guaranteeing that party committees will be able to contribute substantial amounts to their candidates regardless of how much PAC money a candidate accepts.

The state's statutory framework for regulating PAC and political party committee contributions can be traced in part to the state's unique historical skepticism about the role of political parties in the democratic process. Unlike many states, Wisconsin does not require voters to register by party. Unlike many states, Wisconsin elects its local public officials on a non-partisan basis. *See* Wis. Stat. § 5.60. And, unlike many states, Wisconsin has an "open" presidential preference primary in which people may vote in either party's primary without publicity dis-

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[4] Ariz. Rev. Stat. Ann. § 16-905.C. (West 1989 pocket part); Cal. Gov't Code § 85305 (West 1990 pocket part); La. Rev. Stat. Ann. § 18:1505.2.H(7)(a) (West 1990 pocket part); Mont. Code Ann. § 13-37-218 (1989). Hawaii limits total contributions from a political party to its candidates, but it does not count PAC contributions in that limit. Haw. Rev. Stat. § 11-205.

closing a party affiliation. *See Democratic Party of the United States v. Wisconsin*, 450 U.S. 107 (1981). The purpose of the open primary, established in 1903, is to "open up participation in the nominating process and minimize the influence of 'party bosses.'" *Id.* at 128 (Powell, J., dissenting). The campaign finance law in § 11.26(9)(a) reflects that same spirit and that same goal.

The Wisconsin Supreme Court based its decision on the statute's extensive legislative history and the state's own political history. Pet. App., pp. A-5, A-18 to A-20. A decision by this Court resolving the petitioners' challenge to the Wisconsin statute will have little or no impact outside the state and, on that basis alone, the Court should deny the petition.

B. The Scant Factual Record Makes This Case Inappropriate For Review.

The record in this case is so inadequate that it substantially limits this Court's ability to address the statute's constitutionality. The record is a 17 paragraph stipulation of facts that does little more than identify the parties, describe the statute, and summarize the pending civil action against Rep. John Gard. Pet. App., pp. A-39 to 41, A-51. A series of key "facts" in the petition, facts apparently indispensable to the petitioners' argument, appear nowhere in the record.

The petitioners contend that there can be no regulation of contributions by political party committees. Petition, p. 22. They particularly argue that in-kind contributions by political party committees to their candidates are not corrupting and that Rep. Gard's "only alleged violation is that he accepted an illegal amount of financial support—most of it in the form of in-kind services—from his party." *Id.* at 20. Of the $18,820 Rep. Gard accepted from all committees, they assert, "a total of $10,973 came from party committees, and of that amount, 82 percent

was in the form of in-kind contributions (*e.g.*, Republican party staff assistance)." *Id.* at 8. Yet there is nothing in the record that establishes the amount of political party contributions Rep. Gard received either in cash or in-kind contributions.[5]

The petitioners repeatedly criticize the Wisconsin Supreme Court for deciding this case without any "evidence." *E.g.*, Petition, pp. 11, 16. There is no "evidence," they argue, that state party committees receive significant PAC contributions from the national party committees. *Id.* at 11; *see infra* at 18 & n.9. There is no "evidence" because the petitioners decided to bring this case as an original action based on a perfunctory stipulation of facts that did not purport even to address the issues they now consider dispositive.

While the state supreme court properly upheld the statute, relying on legislative findings of fact and the state's expansive precedent for taking "judicial notice" of other facts, a trial could have provided even more evidence of "actual," "apparent" or "potential" corruption —through expert testimony about campaign practices and finances and an entire body of statistical evidence developed by the State Elections Board. *Cf. Buckley v. Valeo*, 424 U.S. 1, 20-21 & nn.20-23, 32-34 & nn.34-40 (1976) (*per curiam*). Neither this Court nor the State of Wisconsin should now have to labor under the disabilities created by the petitioners' tactical decision to begin their constitutional challenge to the statute in the state's highest court. It should end there as well.

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[5] The only reference below to these "facts" is a statement in the petitioners' state supreme court reply brief. *See* Petitioners' Reply Brief, p. 2, *Gard v. State Elections Board, supra.* They did not file any supporting documents with the Wisconsin court, however, and there is nothing in the record to substantiate their assertions.

II. THE WISCONSIN SUPREME COURT EXPRESSLY AND CORRECTLY SUBJECTED THE STATE CAMPAIGN FINANCE LAW TO STRICT SCRUTINY.

The petitioners have staked their entire case for a writ on the contention that the Wisconsin Supreme Court somehow "abandoned" strict scrutiny when it identified the "potential for corruption" as the compelling state interest that justifies the contribution limit. Yet the Wisconsin court expressly stated that it had given the state campaign finance law strict scrutiny, and so it did. This Court itself has recognized, moreover, that avoiding "potential corruption" is indeed a compelling state interest that warrants contribution limits.

The Wisconsin Supreme Court could not have been more explicit in its declaration that it reviewed the challenged statute with the strictest scrutiny.

> We conclude that sec. 11.26(9)(a), Stats., which restricts committee contributions to a candidate's campaign, burdens the First Amendment rights to free speech and association of those committees and, therefore, is subject to strict judicial scrutiny. The statute will pass constitutional muster only if this court concludes that it is justified by the compelling state interest in preventing corruption or the appearance of corruption and if it is narrowly tailored to accomplish that end.

Pet. App., p. A-13. Consistent with that strict scrutiny, the court refused to "blindly defer" to the Wisconsin legislature's findings of fact and legislative judgment. *Id.* at A-16. Instead, it "independently review[ed] the legislative determinations that Sec. 11.26(9)(a), Stats., was necessary to prevent corruption or the appearance of corruption and that it was the least restrictive means of achieving that legislative goal." *Id.* at A-17. After a thorough review of the statute's legislative history, the court concluded that the statute "survives strict scrutiny." *Id.* at A-36.

The petitioners nevertheless insist that the Wisconsin court "substituted a rational basis test for strict scrutiny" by "broaden[ing] the scope of 'compelling state interest' to include 'potential for corruption.'" Petition, p. 15. The petitioners are wrong. This Court *has* recognized that deterring the "potential for corruption" is a compelling state interest. In *Buckley v. Valeo*, *supra*, the Court upheld the $1,000 limit in the Federal Election Campaign Act (FECA) on the contributions that individuals and some groups may make to candidates.

> The Act's $1,000 contribution limit focuses precisely on the problem of large campaign contributions —the narrow aspect of political association where the *actuality and potential for corruption* have been identified. . . .

424 U.S. at 28 (emphasis added). Similarly, Justice Blackmun wrote that "contributions to political committees can be limited only if those contributions implicate the governmental interest in preventing *actual or potential corruption*, and if the limitation is no broader than necessary to achieve that interest." *California Medical Ass'n v. FEC*, 453 U.S. 182, 203 (1981) (Blackmun, J., concurring) (emphasis added). The next year, a unanimous Court upheld the prohibition in 2 U.S.C. § 441b on corporate and union contributions and expenditures, "accept[ing] Congress' judgment that it is the *potential for such influence* that demands regulation." *FEC v. National Right to Work Comm.*, 459 U.S. 197, 210 (1982) (emphasis added).

The "potential for corruption" standard, the petitioners argue, would mean that a campaign finance restriction could be based on a "mere *possibility* of corruption." Petition, p. 14 (emphasis in original). But, this Court has held it is sufficient that a state has "identified as a serious danger the *significant possibility* that corporate political expenditures will undermine the integrity of the political process, and . . . implemented a narrowly tail-

ored solution to that problem." *Austin v. Michigan State Chamber of Commerce*, —— U.S. ——, 109 S.Ct. 1391, 1402 (1990) (emphasis added).

The Wisconsin Supreme Court's decision repeatedly focused on the "appearance of corruption," as well as its "potential," just as this Court has done. Pet. App., pp. A-13, A-17. The petitioners labor in vain to distinguish the state's interest in avoiding the "potential for corruption" from its interest in avoiding "actual or apparent corruption." The only difference is semantic, not substantive.

The petitioners have chosen to rest their request for a writ on a frivolous play on the words of the Wisconsin court's opinion. To suggest that the court applied too lenient a standard of review solely because the court sometimes used the phrase "potential for corruption" to identify the state's interest is, to put it generously, strained. The Wisconsin Supreme Court properly applied the most exacting judicial review to the challenged statute. The petitioners' assertion that the court applied the wrong standard is groundless.

III. THE WISCONSIN STATUTE DOES NOT VIOLATE THE FIRST AMENDMENT.

Based upon its independent review of the statute's unique legislative history, the Wisconsin Supreme Court concluded that the state has a compelling interest in placing an aggregate limit on the contributions a candidate may accept from all committees, political party committes as well as PACs. Pet. App. pp. A-5 to 24. The court concluded as well that the statute is narrowly tailored to achieve that compelling interest. *Id.* at A-24 to 36. Those conclusions were correct.

A. This Court Has Affirmed Similar Contribution Limits.

This case is about contribution limits, not expenditure limits.[6] This Court has concluded that limitations on contributions like § 11.26(9)(a) impose only a "marginal restriction" on the contributor's speech:

> By contrast with a limitation upon expenditures for politcal expression, a limitation upon the amount that any one person or group may contribute to a candidate or group entails only a marginal restriction upon the contributor's ability to engage in free communication. A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. . . . While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor.

Buckley v. Valeo, 424 U.S. at 20-21. Given that critical constitutional distinction, this Court has "consistently held that restrictions on contributions require less compelling justification than restrictions on independent expenditures" and candidate spending. *FEC v. Massachusetts Citizens For Life, Inc.*, 479 U.S. 238, 259-60 (1986) *(MCFL)*; *FEC v. National Conservative Political Action Comm.*, 470 U.S. 480, 491, 497 (1985). Indeed, the Court has recognized "the need for . . . broad prophy-

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[6] The petitioners have attempted to characterize the aggregate contribution limit of § 11.26(9)(a) as an expenditure limit. Petition, p. 3. The Wisconsin Supreme Court rejected that characterization. After candidates reach the aggregate committee contribution limit, the court noted, they "can still receive an unlimited amount of money from other individuals, from their own sources, and from individuals through other sources such as conduits." Pet. App., p. A-15. The court concluded that the statute "is a limit on the amount of money committees can contribute to a candidate and not a limit on the amount of money a candidate may spend. . . ." *Id.*

lactic rule[s]" regarding campaign contributions "[i]n light of the historical role of contributions in the corruption of the electoral process. . . ." *MCFL*, 479 U.S. at 260. And in Wisconsin, that "historical role" has involved party committees. *See supra* at 5-9.

Those "broad prophylactic rules," this Court has recognized, can and do include aggregate limits like the limits in Wisconsin law on contributions by PACs and political party committees. In *Buckley*, the Court affirmed the FECA's $25,000 aggregate limitation on total contributions by an individual during a calendar year. 2 U.S.C. § 441a(a)(3). An aggregate limit, the Court agreed, does indeed restrict the total number of candidates and committees an individual can support. But that limit, the Court concluded, has a compelling purpose:

> [It] serves to prevent evasion of the $1,000 contribution limit by a person who might otherwise contribute massive amounts of money to a particular candidate through the use of unearmarked contributions to political committees likely to contribute to that candidate, *or huge contributions to the candidate's political party*. The limited, additional restriction on associational freedom imposed by *the overall ceiling is thus no more than a corollary* of the basic individual contribution limitation that we have found to be constitutionally valid.

424 U.S. at 38 (emphasis added).

This Court held as well in *Buckley* that Congress reasonably could conclude that bribery statutes and disclosure requirements "were only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions. . . ." *Id.* at 28. For that same reason, the Wisconsin court rejected the petitioners' contention that other provisions in the campaign finance law—individual committee contribution limits, for ex-

ample, or anti-earmarking provisions—somehow are sufficient to prevent PACs from laundering contributions through political party committees. Pet. App. at A-25.

The Wisconsin Supreme Court, following this Court's mandate in *Buckley*, concluded that the aggregate committee contribution limit is "no more than a corollary" of the individual committee contribution limits *not* challenged by the petitioners. Pet. App., p. A-24. The petition should be denied because the decision of the Wisconsin court is consistent with—indeed, it is compelled by—the previous decisions of this Court.

B. The Statute Properly Limits The Ability Of PACs To Use Party Committees To Exert Undue Influence On State Candidates.

The focus of the petitioners' challenge, at least in this Court, seems to be the inclusion of party committee contributions in the 65 percent aggregate limit on all committee contributions. Notwithstanding the sparse record offered by the petitioners, however, the Wisconsin court found ample justification for the statute's limit on party committees in its legislative history and in the statistical material of which the court took judicial notice.

Political committees, the petitioners contend, "are concededly not 'narrow interest' nor corrupting." Petition at 16. But petitioners' argument against limits on political party contributions ignores the source of the parties' money. The petitioners fault the state law because the state legislature does not share their naivete. PACs can and do use the political party committees to influence the political process, and that is precisely why § 11.26 (9) (a) limits their contributions to candidates, as does federal law, in 2 U.S.C. § 441a(a) (2) (A).

The petitioners cannot question the Wisconsin legislature's finding that PAC contributions pose a danger of corruption. Although the petitioners suggest that PAC contributions are no more corrupting than individual con-

tributions, *see* Petition, p. 16,[7] they challenge neither the state limit on contributions by individual PACs nor the 45 percent aggregate limit on all PAC contributions. *Id.* at 5; *see supra* at 3 n.2. The aggregate limit on committee contributions challenged by the petitioners, like the federal aggregate limit on contributions by an individual, is "no more than a corollary" of the basic limit on individual committee contributions.

The petitioners further complain that the Wisconsin court based its decision on only one type of party committee, legislative campaign committees, and that not all party committees are equally dominated by PACs. Petition, p. 18. That misstates the facts and the dominant influence PACs have on party committees.[8] There is an even more fundamental error in the petitioners' argument, however: the assumption that PACs must completely dominate, subvert or corrupt all party committees before the legislature can act. A potential for corruption is enough.

The legislature identified a significant potential for corruption in the laundering of special interest money that occurs when contributions flow unchecked through the party committees to the candidates. The facts that

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[7] Yet the petitioners themselves concede that a candidate who obtains a greater proportion of campaign financing from PACs "is more beholden to those committees and more likely to be corrupted." Petition, p. 12.

[8] During the 1983-84 reporting period, for example, 77 percent of the contributions to the parties' legislative campaign committees came from PACs. Pet. App., p. A-22. In the most recent biennium, the figure was 70 percent—overwhelming dominance, in other words. *Id.*

The petitioners contend that the two major party committees received "only" 11 percent of their contributions directly from PACs. Petition, p. 18. They ignore the fact that the party committees received another $701,162—an additional 13 percent of their funds—from other political party committees, including legislative campaign committees that, in turn, received almost all of their money from PACs. Pet. App., pp. A-22, A-60.

are in this record document the overwhelming influence of PAC contributions on the parties' legislative campaign committees and the significant extent of PAC contributions to the political parties. Special interests can and do use parties to launder their contributions. That is what the Wisconsin legislature and the state supreme court both found as fact. And that is what the Court acknowledged in *Buckley* when it said that aggregate contribution limits are necessary to prevent evasion of the $1,000 individual contribution limit "through . . . huge contributions to the candidate's political party." 424 U.S. at 38.

Further, state party committees may receive unlimited amounts of money from their national counterparts and distribute unlimited amounts to related party units, local or county. *Id.* at A-29. For that very reason, the Wisconsin Supreme Court concluded, § 11.26(9)(a) is essential to prevent unlimited contributions from reaching state party committees and, ultimately, their candidates through the national parties—unregulated by either state or federal law. *Id.* at A-26 to 27. The potential for that abuse, the court stated, justifies the limits on contributions by political party committees, including the legislative campaign committees. *Id.*[9]

C. The Statute Imposes Only Marginal Restrictions On Speech.

Political committees, including parties and their legislative campaign committees, have a substantial ability to support their candidates, not just through direct contributions. To the extent the statute restricts PAC contributions, PACs may make *unlimited* independent expenditures to support or oppose candidates for state office, regardless of how much they may have contributed directly

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[9] The petitioners criticize the court for identifying this potential for abuse without any "evidence" that national parties "launder" contributions for state parties and candidates. Petition, p. 18. The petitioners' own choice of forum and their reliance on an inadequate stipulation of facts precluded the development of any record on this point, which the petitioners now find so important.

to those same candidates. Wis. Stat. § 11.06(7); Wis. Admin. Code § El. Bd. 1.42(4). While legislative campaign committees and other political party committees may not make independent expenditures under federal or state law, the Wisconsin legislature has recognized that the parties can reflect a different kind of political support than PACs. Accordingly, it enacted § 11.26(9)(b) in 1977 to preserve the parties' ability to make substantial contributions to their candidates. *See supra* 7 & n.3. That statute prohibits PACs from contributing more than 45 percent of a candidate's spending level, guaranteeing that political party committees may contribute, at a minimum, nearly one-third of the aggregate 65 percent limit. A candidate may decide to accept no PAC contributions at all, moreover, and take the entire 65 percent of the expenditure limit from political party committees.

Party-related committees also may spend unlimited amounts of money in party building and generic "vote Democratic" or "vote Republican" activities. Pet. App., pp. A-28 to 29. Nothing prohibits three of the petitioners —the Republican Assembly Campaign Committee and the two county parties—from spending as much as they desire to urge voters to elect all Republicans running for the assembly and every other office. *Id.* at A-28 to 29. The members of the party themselves retain the right as well to make their own individual contributions or unlimited independent expenditures to elect the party's candidates.

The petitioners' statement that state law "precludes" party committee contributions after a candidate has reached the 65 percent limit is false. Petition, p. 5. As the Wisconsin Supreme Court observed, a candidate may return any contribution at any time. Pet. App., p. 27. If any candidate wished to accept additional party committee contributions after reaching the 65 percent aggregate limit, for example, that candidate could do so by re-

turning some or all of the PAC contributions the candidate already had accepted.[10]

D. The Sparse Record In This Case Could Not Support A Finding That The Contribution Limit Is Unreasonably Low.

The petitioners appear to frame their argument in absolute terms—states may not limit party committee contributions to candidates, period. They really may be arguing, however, that even if a state may place reasonable limits on party committee contributions to candidates, as federal law does, then the Wisconsin limit is unreasonably low. If that is their argument, the Court still should deny the petition because the meager record in this case is devoid of any facts on which this Court could second-guess where the Wisconsin legislature drew the line.

State law guarantees that political party committees will be able to contribute a minimum of 20 percent of a candidate's disbursement level. Pet. App., p. A-28. State

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[10] The petitioners' assertion that a contribution may not be returned more than 15 days after its receipt misstates the law. Petition, p. 19. Under Wis. Stat. § 11.06(8), a candidate "may return a contribution *at any time*, before or after acceptance." (Emphasis added.) Accordingly, the Wisconsin Supreme Court held that "[o]nce a candidate has reached the aggregate limit, the candidate may always return some contributions from committees in order to accept contributions from other committees." Pet. App., p. A-27. That is a definitive interpretation of state law not reviewable by this Court.

The petitioners also question how a candidate could return an in-kind contribution. Petition, p. 19. That can easily be done by paying the contributor the value of the in-kind contribution, a value that must be established in any event for campaign finance reports. The contribution then becomes a purchase of goods or services rather than a contribution subject to limit. In *Buckley*, the Court recognized that in-kind contributions are legitimately included in contribution limits because the "ultimate effect is the same as if the person had contributed the dollar amount to the candidate and the candidate had then used the contribution to pay" for the equivalent goods or services. 424 U.S. at 36-37.

assembly candidates like John Gard, for example, may accept up to $3,450 in party contributions even if they accept all of their allowed PAC contributions. They may take up to $11,213 from party committees if they take no PAC money. Pet. App., pp. A-9 to 10; A-40. The only conceivable "evidence" that this limit might be too low is Rep. Gard's assertion, in a letter to the State Elections Board, that he could not have won the election without violating the law. *Id.* at A-58.[11] That self-serving statement, unchallenged in any evidentiary hearing and unsubstantiated by any fact-finder, is hardly a sufficient basis for making a constitutional determination.

Moreover, the limit on party committee contributions in the Wisconsin statute is particularly generous in comparison with the limits in federal law. Under the FECA, federal *and* state party committees may contribute only $5,000 each to congressional candidates, and those committees may make only $10,000 in "coordinated" expenditures—a total party contribution of $20,000. *See* 2. U.S.C. §§ 441a(a), 441a(d)(3). Under state law, parties may contribute a *minimum* of $3,450 to assembly candidates and a maximum of $11,213. In congressional districts, which in Wisconsin are roughly 11 times larger than state assembly districts,[12] federal law allows party committee contributions only six times the minimum amount a party committee may contribute to its assembly candidate under state law. Proportionately, then, state law allows *at a minimum* party contributions nearly twice as large as the FECA and, at a maximum, over six times as large.

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[11] By his own account, Rep. Gard outspent his opponent by $11,321.33 ($34,965.22 to $23,643.89), Pet. App., p. A-58, and exceeded the statutory contribution limit by $7,607.32. *Id.* at A-40. Had he obeyed the law, he still would have outspent his opponent by $3,714.00.

[12] There are nine congressional districts and 99 assembly districts in the state. Wis. Stat. §§ 3.001, 4.001.

If the petitioners wish to challenge the reasonableness of the party contribution limit, the appropriate forum is a trial court where the litigants can develop a complete factual record. The petitioners chose not to do that and, now, there is no basis in the record for determining that the statutory limits are unreasonable. There certainly is no basis in the record for finding the statute unconstitutional.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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